

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
)	Under Chapter 11
KENNETH LAVERNE POWERS)	
and WILLRENE BERYL POWERS\$)	No. BK 88-50469
)	
Debtor(s).)	
)	
FARM CREDIT BANK OF ST.)	
LOUIS,)	
)	
Plaintiff(s),)	
)	
v.)	
)	
KENNETH LAVERNE POWERS)	
and WILLRENE BERYL POWERS\$)	
)	
Defendant(s).)	

O R D E R

This matter having come before the Court on a Motion for Relief from Stay filed by the Farm Credit Bank of St. Louis ("Bank"); the Court having reviewed the evidence presented and heard the arguments of counsel, finds as follows:

On or about October 31, 1978 debtors executed and delivered to the Bank a promissory note in the amount of \$240,000.00. The note was secured by a mortgage executed by debtors on the same date. Upon debtors' subsequent default, the Bank instituted a foreclosure action in state court. Debtors subsequently filed a petition under Chapter 11 of the Bankruptcy Code, and the Bank then sought relief from the automatic stay to proceed with its foreclosure suit.

The Bank claims that as of February 16, 1989, debtors owe the Bank \$331,294.48. Debtors dispute the amount of interest that is

owed, but appeared to agree at the hearing on this matter that they owe the Bank approximately \$300,000.00. Debtors state in their schedules that the farm real estate mortgaged to the Bank has a market value ranging from \$204,700.00 to \$265,000.00. Additionally, in their proposed Plan of Reorganization, debtors state that the real estate can be sold for the approximate sum of \$265,000.00 to \$275,000.00.

Debtors contend that 1) the value of the Bank's security interest should be determined as of the date that the bankruptcy petition was filed; 2) the value of the real estate at the time the petition was filed was \$204,700.00; and 3) the debtors are entitled to the difference between that amount and whatever amount the sale of the real estate brings, for distribution to other creditors.

Section 1129 of the Bankruptcy Code, however, provides in part:

(2) [T]he condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides(II)that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property....

11 U.S.C. §1129(b)(2)(A)(i)(II). Under this section, valuation is determined as of the "effective date of the plan." Although the Court need not determine at this time what the "effective date of the plan"

is for all cases, the Court finds that in the absence of a statement in the plan indicating otherwise, and in the absence of any other evidence, the "effective date of the plan" is the date of confirmation. Therefore, under the facts of this case, the Bank would be entitled to receive the value of its collateral as of the date of confirmation, i.e., \$265,000.00 to \$275,000.00.

In light of the fact that the debtors owe at least \$300,000.00 to the Bank, the debtors have no equity in the real estate. Furthermore, debtors have failed to prove that the real estate is necessary to an effective reorganization. In fact, any such argument is without merit since debtors' plan proposes to liquidate the real estate.

Accordingly, for the reasons stated, the Bank's Motion for Relief from Automatic Stay is GRANTED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: February 27, 1989